



CITY OF SUNNYVALE REPORT ADMINISTRATIVE HEARING

November 25, 2009

File Number: 2009-0753

Permit Type: Use Permit

Location: 805 Devonshire Way (near Kingfisher Way) (APN: 309-28-027)

Applicant/Owner: Bret Flesner/Bret Flesner & Loree Watanabe

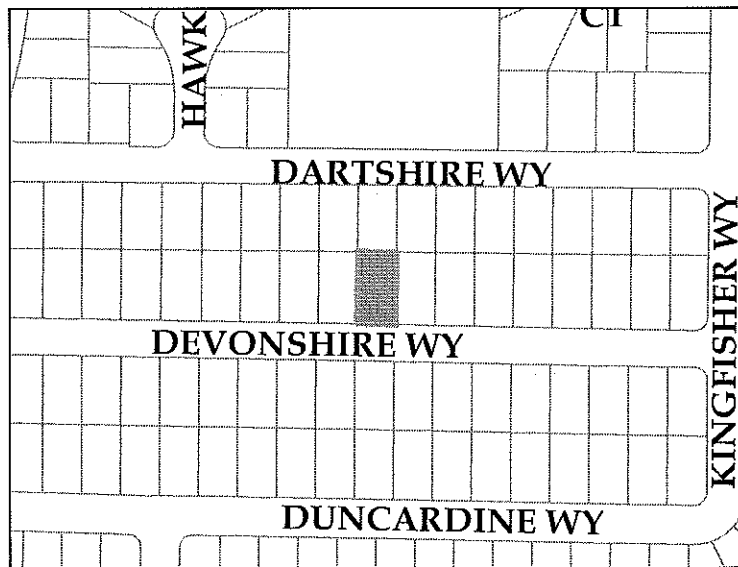
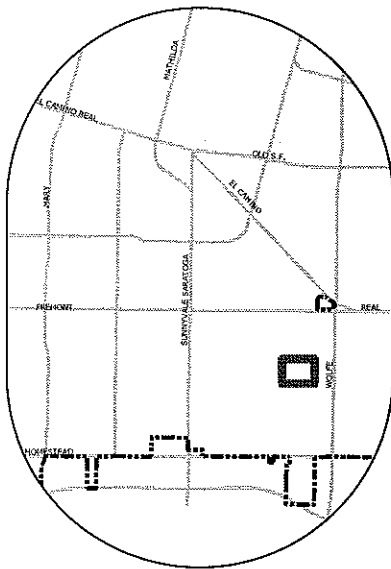
Staff Contact: Mariya Hodge, Associate Planner, (408) 730-7659

Project Description: A 7-foot 1-inch tall fence located in the required front yard.

Reason for Permit: A Use Permit is required for fences exceeding 7 feet in height.

Issues: Neighborhood compatibility

Recommendation: Approve with conditions



500

Feet

PROJECT DESCRIPTION

Existing Conditions:	Single-family residence	Existing Fence Setback:	6' (unpermitted)
Zoning District:	R-0	Proposed Fence Height:	7'1"
Existing Fence Height:	6'10" (unpermitted)	Proposed Fence Setback:	6'

Yes	Previous Planning Projects related to Subject Application: <ul style="list-style-type: none"> ▪ In March of 2009 the applicant submitted a Miscellaneous Plan Permit application to allow a 6-foot 10-inch tall fence in the front yard (#2009-0156). Prior to receiving a decision, the applicant constructed the fence according to the submitted plans. Staff approved the MPP with conditions requiring modification to the height and location of the fence. Two options were provided: leave the fence in its current location and reduce the height to 4 feet 6 inches; or relocate the fence to extend no more than 2 feet beyond the garage face. ▪ The applicant appealed this decision, and the appeal was considered by the Planning Commission on June 8, 2009. The Planning Commission denied the appeal but provided the applicant with a third option for height and location of the fence in addition to those originally provided by staff: to reduce the height to 6 feet 5 inches and locate it 11 feet back from the front property line matching a previously approved fence at 814 Devonshire Way (see Attachment F - Summary of Planning Commission Action). ▪ The applicant has not complied with the Planning's Commission's decision requiring modification of the fence.
No	Neighborhood Preservation Complaints
No	Deviations from Standard Zoning Requirements

Fence Design: The applicant is now proposing to maintain the existing fence in its current location (set back approximately 6 feet from the front property line) and increase the height of the fence to 7 feet 1 inch (an addition of 3 inches). The proposed fence would use the same materials and design as the existing fence. The applicant states that the existing height does not provide sufficient privacy for his front windows and the fence needs to be taller. He also states he does not wish to relocate the fence closer to the home because of a planned addition to the front of the home in the future (see Attachment C – Applicant's Justification Letters).

Landscaping: Devonshire Way incorporates a 5-foot landscaped park strip between the sidewalk and the street. A street tree is located in this park strip in front of the subject property. Front property lines along Devonshire Way are

located approximately 6 inches behind the back of the sidewalk. The existing fence is located approximately 6 feet from the front property line and approximately 8 feet from the driveway. These setback areas are landscaped with a combination of gravel and planter boxes. There is also a landscaping cut-out in the fence along the southwest corner of the property adjacent to 795 Devonshire. A tree has been planted in this cut-out area. The applicant does not propose any modification to this landscaping.

Typical Fence Heights in the Neighborhood: The surrounding neighborhood is characterized by Eichler homes, many of which have front fences original to the construction of the homes. The original Eichler fences in the neighborhood vary in height but generally have at least 6 feet of solid fencing. Some are topped with decorative trellis elements resulting in a total height over 7 feet. However, the original Eichler fences are typically located in line with the front face of the garage or within a few feet of the garage face, leaving a consistent pattern of open front yards from the home to the sidewalk.

Neighborhood Compatibility: Staff finds the proposed fence is not compatible with the surrounding neighborhood. Its location close to the front property line combined with its height create a walled-in appearance that stands in contrast to the prevailing pattern of open front yards throughout the neighborhood.

Public Contact: Ten notices were sent to surrounding property owners and residents in addition to standard noticing practice. Staff spoke with one neighboring resident who came to the One Stop Counter to discuss the application. The neighbor stated that he objects to the existing fence as well as the new proposal. The neighbor later submitted a letter to staff regarding the proposal (see Attachment D – Public Comments).

Environmental Determination: A Class 3 Categorical Exemption (accessory structures) relieves this project from CEQA provisions.

FINDINGS

In order to approve the Use Permit the following findings must be made:

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale.

There is a related policy in the **Eichler Design Guidelines:**

- 3.5.4. Integrate fencing with the house style
 - a) Fences that are 6 feet or more in height are required to be set back a minimum of 15 feet from the front property line.
 - b) The design of fences should be simple and modern in appearance. A fence with a strong vertical or horizontal emphasis, as is common in Japanese garden design, is a common approach that works well

with the Eichler style... In some models, fences are part of the original architecture, and necessary to protect front yard privacy. These fences should be maintained or replaced, as necessary...

Staff was not able to make the finding above. Although the design of the fence has a strong horizontal emphasis as recommended, it is located too close to the front property line. Where front fences are part of the original architecture, the guidelines recommend maintaining those front fences (which are typically located at the face of the garage). The proposed fence is inconsistent with the original Eichler fences in the neighborhood due to its location close to the front property line, and therefore is not consistent with the Eichler Design Guidelines. Staff is recommending approval subject to modifications to bring the fence into conformance with the guidelines. With the previous action of the Planning Commission (permit #2009-0156), the applicant was provided with a series of options for fence heights and locations, including an option to locate a 6-foot 10-inch fence two feet in front of the garage face. Given that the current proposal is for an even taller fence, staff is recommending requiring a greater setback to place the fence in line with the front wall of the garage (see Attachment A).

2. The proposed use ensures that the general appearance of proposed structures, or the uses to be made of the property to which the application refers, will not impair the orderly development of, or the existing uses being made of, adjacent properties.

Due to the height and location of the fence, the proposed project has the potential to create a walled-in appearance in the front yard which is not consistent with the prevailing pattern of open front yards in the neighborhood. Staff was not able to make the finding above, as the proposed design could have a detrimental visual impact on the streetscape. Staff recommends approval subject to modifications (Attachment A) to reduce the fence's visual impacts.

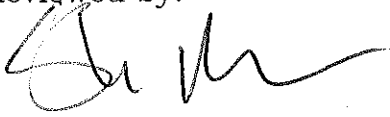
ALTERNATIVES

1. Approve the Use Permit with the conditions in Attachment A.
2. Approve the Use Permit with modifications.
3. Deny the Use Permit.

RECOMMENDATION

Alternative 1. Approve the Use Permit with the conditions in Attachment A.

Reviewed by:



Shaunn Mendrin
Senior Planner

Prepared By: Mariya Hodge, Associate Planner

Attachments:

- A. Standard Requirements and Recommended Conditions of Approval
- B. Site and Architectural Plans
- C. Applicant's Justification Letters
- D. Public Comments
- E. Site Photographs
- F. Summary of Planning Commission Action on Previous Permit Appeal

Standard Requirements

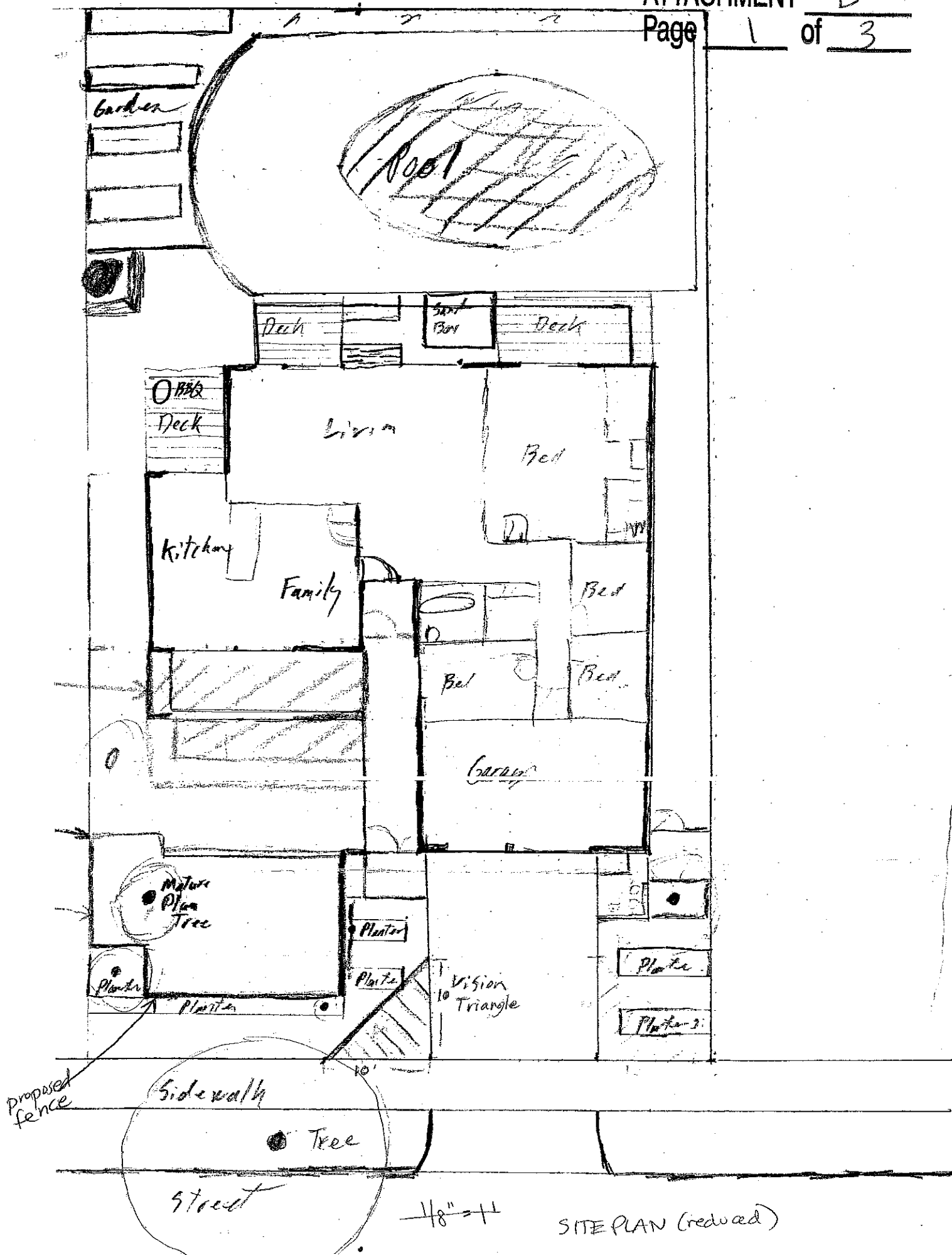
The following is a list of standard requirements. This list is intended to assist the public in understanding basic related requirements, and is not intended as an exhaustive list. These requirements cannot be waived, modified, or appealed.

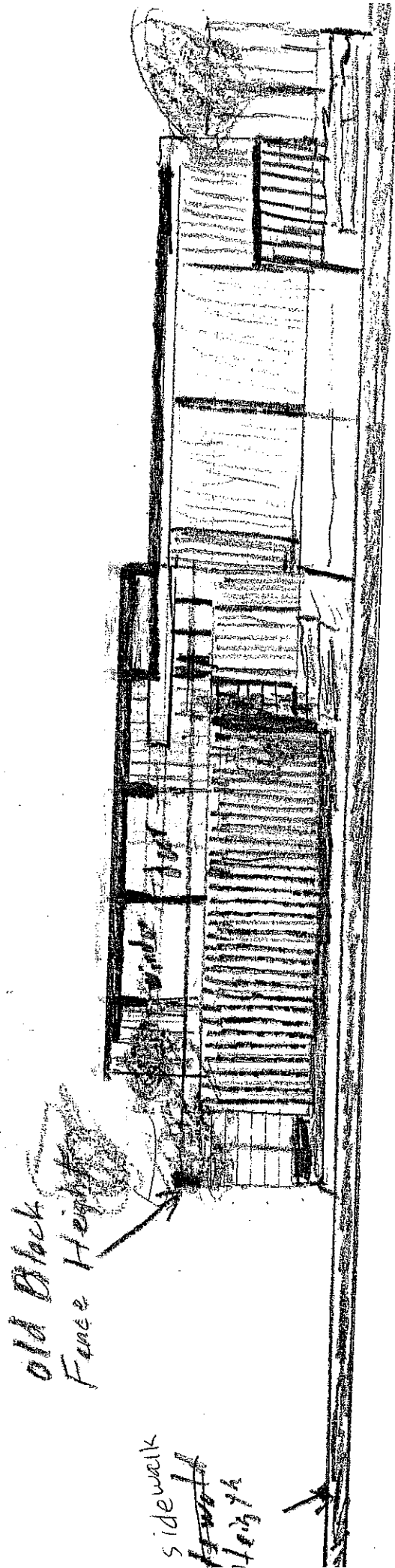
- A. **Permit Expiration:** The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.
- B. **Permit Lapse if not Exercised (Ordinance 2895-09):** The Use Permit shall be valid for three (3) years from the date of approval by the final review authority (as adopted by City Council on April 21, 2009, RTC 09-094). Extensions of time may be considered, for a maximum of two one year extensions, if applied for and approved prior to the expiration of the permit approval. If the approval is not exercised within this time frame, the permit is null and void.
- C. **Building Permits:** Obtain Building Permits if the fence exceeds 6 feet in height as measured from the nearest adjoining grade or incorporates a retaining wall.

Recommended Conditions of Approval

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

- 1. **Modifications to Fence:** If constructed at a height of 7 feet 1 inch from top of curb, the fence shall be relocated to follow the line of the front face of the garage, which is an approximately 21-foot setback from the front property line. *(If the fence is constructed at a lower height, the applicant shall comply with the previous decision of the Planning Commission regarding options for height and location, as well as Condition of Approval #2 below regarding modification deadline.)*
- 2. **Date when Modifications must be Made:** The required Building permits shall be obtained no later than 30 days after the final approval action. All required modifications to the fence shall be completed no later than 90 days after the final approval action.

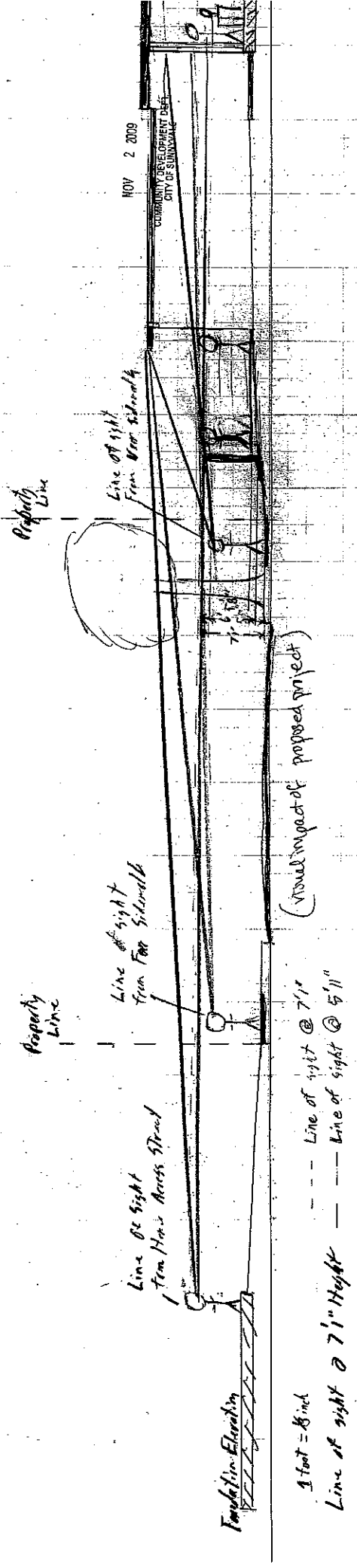
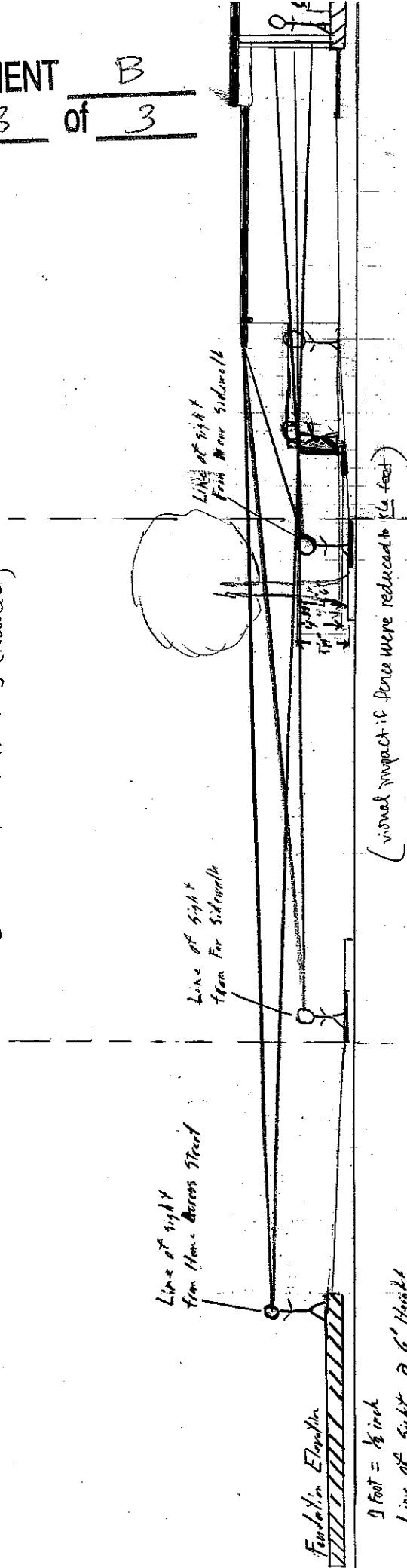




1 1/8" = 1'

FENCE ELEVATION (reduced)

LINE OF SIGHT DIAGRAM (reduced)



NOV 2 2009
 COMMUNITY DEVELOPMENT DEPT.
 CITY OF SALT LAKE

September 28, 2009

City of Sunnyvale
Planning Department
456 W. Olive Ave.
Sunnyvale, CA 94086.

Dear Planning Department,

In accordance with the Neighborhood Preservation letter Dated August 28th 2009 I am resubmitting a modified design of the fence. The original miscellaneous plan permit was submitted on March 23rd 2009 prior to Draft #2 and approval of the Eichler Design Guidelines on July 28th 2009. The plan submitted is in code and with the intent of the Eichler Design Guidelines approved by City Council on July 28th 2009:

- 1) Preserve the unique character of Eichler homes in the neighborhood
- 2) Assist property owners in designing new homes, expansion, and other exterior changes to respect and compliment the scale and character of existing Eichler homes and their surrounding neighborhoods.

The intent of the fence is to enable a proposed future addition to the kitchen and family room into the current courtyard and provide a safe play space for my children that is visible from the kitchen, family room, and entryway. It is our desire to provide additional living and play space while maintaining a usable courtyard consistent with the original Eichler courtyard design.

Annotated below are portions of the Eichler Guidelines, which were incorporated into the submitted design (Public Hearing Review Draft May 5th, 2009).

- 1) When additions must be placed at the front of the house, design the forms and details to appear as though they are part of the original house (page 13, section 3.2.1.b).
- 2) Proposed additions into courtyard (Draft #1 Page 15 section 3.2.1.b courtyard model). **There are no examples of additions for courtyard models in current draft.
- 3) Tall wall for entry garden (Draft #1 Page 15 section 3.2.1 courtyard model)
** There are no examples of additions for courtyard models in current draft.
- 4) Improvements or additions should appear to have been constructed with the original house (page 12 section 3.1.3.a).
- 5) Whenever possible mature trees and landscaping should be protected during construction and integrated into the new landscaping plans (page 12 section 3.1.6).
- 6) Integrate fencing with the house style (page 12 section 3.1.6).
- 7) The design of fences should be simple and modern in appearance. A fence with a strong vertical or horizontal emphasis, as is common in Japanese garden design, is a common approach that fits well the Eichler Style. Two examples are shown to the right. In some models, fences are part of the

original architecture, and are necessary to protect front yard privacy. These fences should be maintained or replaced, as necessary. In most cases simple wood fencing, without lattice is the appropriate design. Concrete block fencing is allowed where it is found in the subdivision (page 19 section 3.5.4.c).

- 8) Other Eichler design elements incorporated in submitted plan (additional resource Eichler Network).
- a. Interior/exterior plan relationship with large areas of glass in private yard areas.
 - b. Post and beam construction
 - c. Low roof plate heights
 - d. Horizontal design emphasis
 - e. Modern, geometric forms
 - f. Interior and entry atriums
 - g. Flat and low pitched roof slopes
 - h. Wide roof overhangs
 - i. Relatively solid wall from façade
 - j. Recessed home entries
 - k. Simple modern detailing
 - l. Exposed beams
 - m. Simply entryway incorporated into architectural features
 - n. Offsetting walls
 - o. Contrasting materials
 - p. Emphasis on indoor and outdoor space
 - q. Fence design compatible with the exterior façade of the home, and the transition from building to the fence should be intension and seamless.
 - r. Carry trim lines or other facades details from the house to the fence.
 - s. Use of vertical textures that echo the pattern of siding or long horizontal planes that carry the lines of the building wall outward.
 - t. The fence and its texture should expand the visual presence of the home.

The design submitted incorporates numerous Eichler design elements and should be reviewed and approved in accordance to Director Hom's statement to City Council on July 28th 2009, "there are number of guidelines and each case will be reviewed individually. There is no requirement that a certain number of guidelines be met...staff views these guidelines as a living document and guidelines will be adjusted..." (see minutes from July 28th, 2009 City Council meeting).

During the City Council meeting on July 28th 2009 Councilmember Swegles inquired of Director Hom if the guidelines could incorporate details for the three different styles. Director responded stating, "staff could identify the original records of the building permit plans for further reference for homeowners... that there are not really three distinct styles of Eichler homes, rather there are distinct features that differ slightly, such as roof lines and windows." In principle, there is predominately one "Eichler Style" which there were several different modes built in Sunnyvale incorporating numerous

common and distinct design elements. It is apparent that the development of the Eichler Design Guidelines removed/omitted design element and features that are distinct and integral to the "courtyard model." potentially imposing undue limitations for courtyard Eichler owners.

I have read and observed much of the public hearings regarding the adoption of the Eichler Design Guidelines and believe that the public concerns can be summarized into a few categories.

- 1) Does the property maintain the look and feel of an Eichler design?
- 2) Are there any safety code violations that would create an unsafe situation?
- 3) Will there be a reasonable expectation of privacy?

The plan submitted addresses these public concerns and should be approved.

The design options provided by staff for the original permit submitted stated unqualified "precedence" or height limitations essentially prohibiting a permit. Upon further staff research a third option was provided defined by yet another "precedence." These actions are contrary to SMC 19.82.020 (a) (1) "The permit shall be considered ministerially without discretionary review, when the applicant is compliant with the relevant standards, the permit shall be issued." I urge approval of the plan submitted based upon its individual merit and the considerable efforts taken to remain true to the Eichler design intent.

Sincerely,

Bret Flesner and Loree Watanabe
805 Devonshire Way
Sunnyvale, CA 94087

November 2, 2009

Mariya Hodges
Associate Planner
City of Sunnyvale
Planning Department
456 W. Olive Ave.
Sunnyvale, CA 94086

NOV 2 2009

COMMUNITY DEVELOPMENT DEPT.
CITY OF SUNNYVALE

Dear Mariya Hodges,

Thank you for the site visit on October 22nd and hand delivering the request for additional information. Based upon our discussion I have rendered a new line of site drawing included are 2 elevations for the front wood section of the fence one at 7' 1" and one at 5' 11" to curb. This additional drawing identified the height of the fence to the curb and to both grades (interior and exterior). The line of sight drawing clearly indicates the impact of the reduction in height from the original fence height of 11' 4" to 7' 1" or 5' 11".

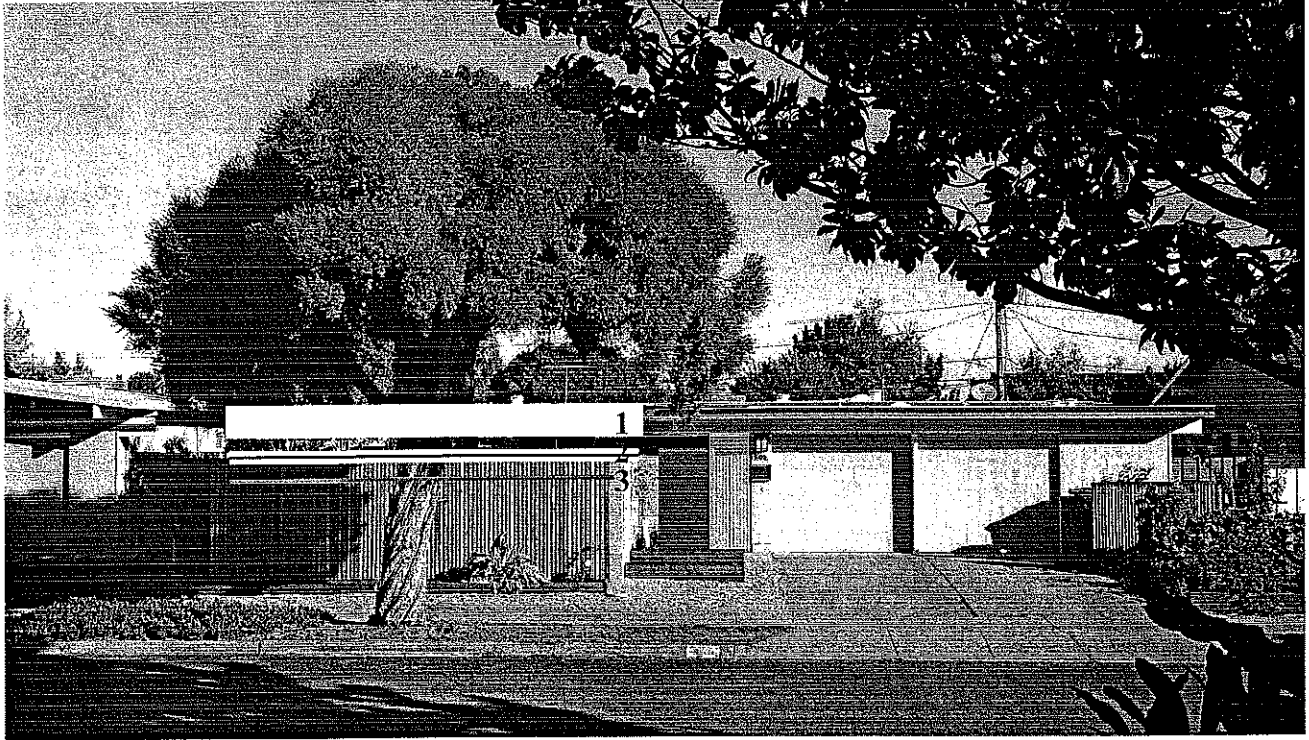
We had also discussed providing some additional information supporting the project purpose and to further illustrations of the Eichler design elements. This document articulates 11 project goals, provides a before and after pictorial example, and identifies 21 Eichler design elements incorporated in the fence design.

I believe that this plan supports the project goals and is a balanced approach to preserve the unique character of our Eichler home and neighborhood. I look forward to your feedback to further assist with the design in order to support the scale, character, and purpose of the project.

PROJECT GOALS:

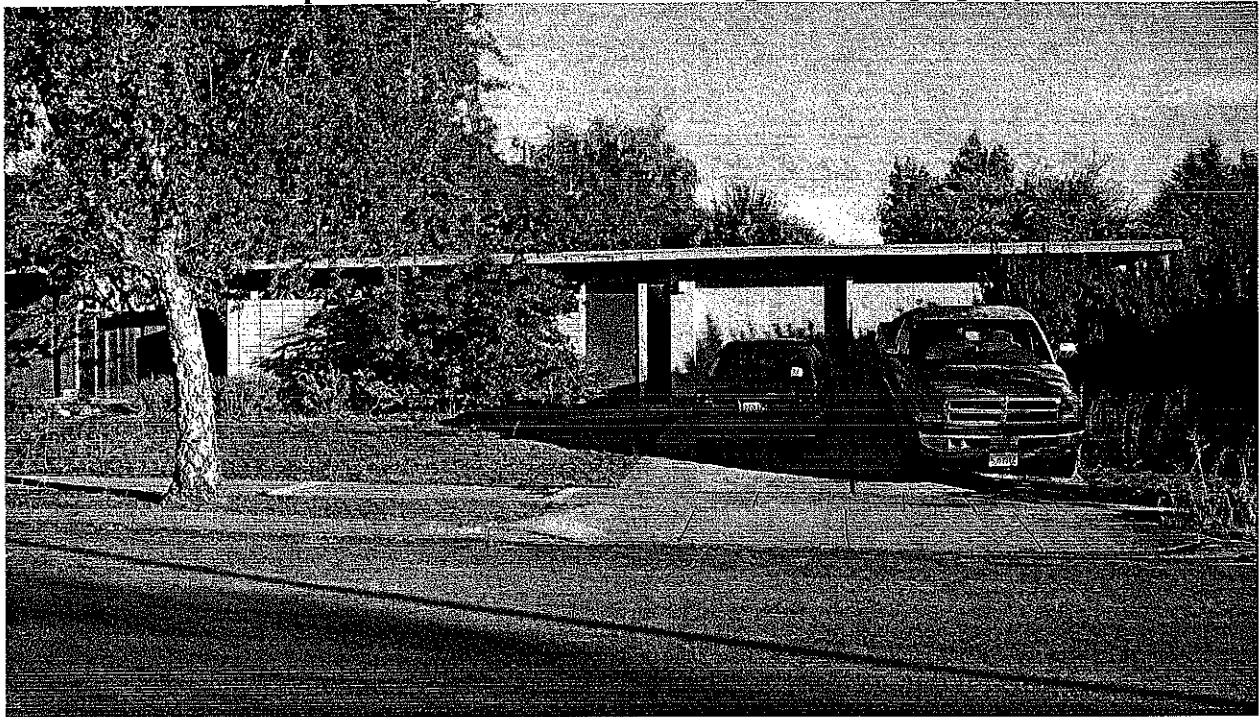
- 1) Enable a proposed future addition to the Kitchen and Family Room (see site layout).
- 2) Provide a safe play space for my children which is visible from the Kitchen and Family room.
- 3) Preserve the unique character of our Eichler home
- 4) Respect the scale and character of existing Eichler homes and the surrounding neighborhood.
- 5) Comply with all safety and SMC code requirements.
- 6) Use the Eichler Guidelines to assist in designing additions and other exterior changes to respect and compliment the neighborhood.
- 7) Use additional resource to further incorporate and enhance Eichler design elements (Eichler Network, Internet sites, Open house visits, etc.)
- 8) Build fence around mature Plum tree and accentuate our family value for home grown organic fruits and vegetables.
- 9) Maintain a reasonable level of privacy with respect to the interior home and the courtyard.
- 10) Maintain the Courtyard feature while enabling an expanded Kitchen and Family room.
- 11) Provide a more open and welcoming appearance to the original front façade.

Submittal Support
Fence Elevation Example

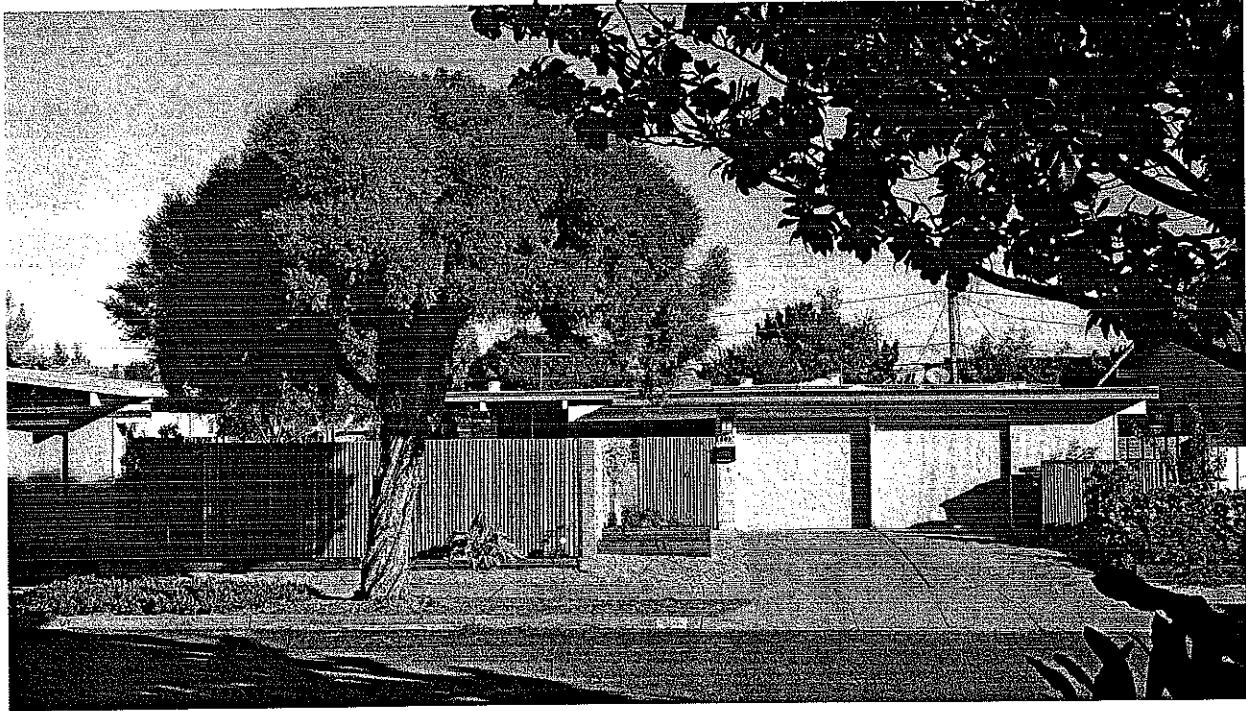


- 1) Original fence height identified in white @ 11' 4" to curb (4' 4" higher than Eichler Guideline)
 - 2) Permit fence height requested not to exceed 7' 1" to curb identified by black line
 - 3) Red line @ 5' 11" Height (Recommended height from Eichler Guideline 3.5.4(b))
- **Refer to line of site drawing for more details

Example of original in the same tract @ a near by property

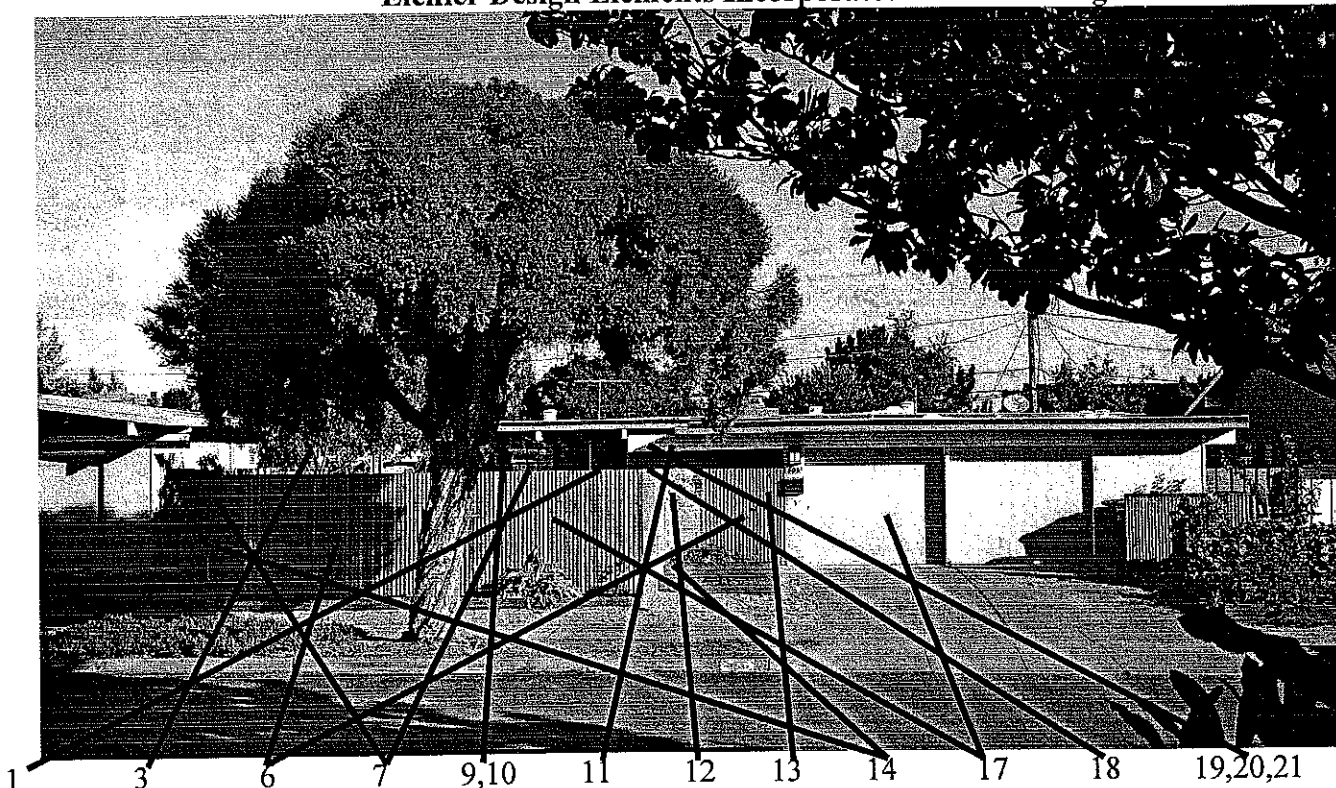


Submittal Support
Example of planned fence



In order for the submitted design to meet ALL of the Eichler Guidelines the front wood section of the fence would be further reduced to an approximate height of 5' 11" to the nearest curb (see fence elevation example). This would significantly further reduce the privacy to the interior of the house, impair the simple and modern appearance, reduce the Eichler Design Elements incorporated into the overall design, and exceed the intent of the Eichler Guidelines.

Eichler Design Elements Incorporated in Fence Design



**Picture take from across street @ entryway grade, eye height ((5'4") house grade approximately 4-6" higher)

Eichler Design Elements incorporated into fence:

- 1) Tall wall for entry garden
- 2) Improvements should have appeared to have been constructed with the original house
- 3) Mature trees (mature plum tree 15' from property line) and landscaping should be incorporated into new
- 4) Integrate fencing with the house style
- 5) Design is simple and modern in appearance
- 6) Strong vertical lines
- 7) Horizontal emphasis
- 8) Protects front yard privacy
- 9) Provides privacy to home's interior (Kitchen and Family room)
- 10) Interior and exterior plan relationship with large area of glass in private yard
- 11) Emphasis on post and beam construction
- 12) Relatively solid wall and façade
- 13) Simple entryway incorporated into architectural feature
- 14) Offsetting walls
- 15) Contrasting materials (concrete block, redwood fence, granite gravel, integrated redwood planter boxes,)
- 16) Emphasis on indoor and outdoor space
- 17) Fence compatible with exterior façade of house (1x2 vertical slating)
- 18) Transition to fence from house is seamless
- 19) Carry trim lines or other façade details from fence to house
- 20) Use of horizontal planes that carry the line of the building wall outward
- 21) Fence texture expands the visual presence of the home

Thank you for your consideration.

Bret Flesner and Loree Watanabe
805 Devonshire Way
Sunnyvale, CA 94087

Public Comments Received at One Stop Counter

Staff spoke with one neighboring resident who came to the One Stop Counter to discuss the application. The neighbor stated that he objects to the existing fence as well as the new proposal. He stated that the fence is too tall and too close to the sidewalk. He noted that the neighborhood has traditionally had open front yards between the garages and the street, and the proposed fence does not match this pattern. He stated that the fence is very visible from a distance coming down the street. He also expressed concern that after more than five months the applicant has not modified the existing fence to comply with Planning Commission's decision and is now proposing something even taller. He requested that the application be denied and the applicant be made to comply with the previous decision.

RECEIVED

NOV 18 2009

Dept of Community Development
436 West Olive Avenue
P.O. Box 3707
Sunnyvale, Ca.

PLANNING DIVISION

Dear Ms. Hodge,

I am writing in response to our recent conversation about a use permit for a 7 foot tall fence in the front yard of the property located at 805 Devonshire Way. I live at 794 Devonshire Way which is almost directly across the street.

I was surprised to learn that another use permit is to be considered on Wednesday November 26th. I was under the impression that this matter had been decided at a Planning Commission hearing in June. The ruling that was handed down was that the fence if left in the present location would have to be reduced to 4 foot or alternately if left at the present 6 foot height would have to be relocated at least 11 feet back from the sidewalk. It was stated that no appeal could be made. Now almost six months later no action has been taken on this ruling. Instead I received a public notice of a hearing on a second use permit for a fence 7 feet high. It is beyond belief that the City is even considering this.

Eichler uniformly set all the houses on this street back approximately 20 to 25 feet from the sidewalk. This provided a neat clean open appearance to the entire street. Now the resident at 805 builds this 6 feet fence out almost to the sidewalk. There is no front yard. If this fence is allowed to remain eventually others on the street will follow suit. You will end up with a cluttered, patchwork of homes and all the open appearance of the street will have disappeared.

The Sunnyvale city council just recently approved a set of guide lines for the preservation of Eichler home neighborhoods. This fence at 805 is definitely in violation of these guide lines. If the City should approve of this new use permit it will make a mockery of the Eichler Guide lines.

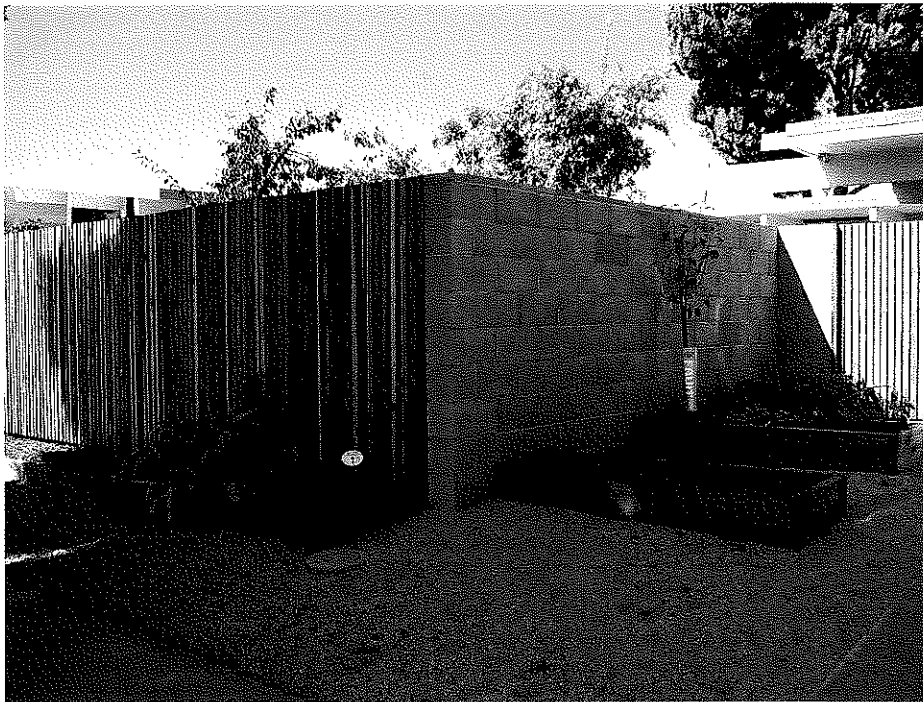
Sincerely,



Charles E. Fogle
794 Devonshire Way
Sunnyvale, Ca 94087
408-739-7829



Photograph of the subject site from across the street showing the existing fence (unpermitted) at a height of 6'10".



Photograph of southeast corner of fence showing existing landscaping.



Photograph of southwest corner of fence showing existing landscaping.



Photograph of fence interior. The block wall shown in the photo is located at the front wall of the garage.



Photograph from inside fence gate showing the front of the home and the front yard space behind the existing fence.



June 25, 2009

Bret Flesner
805 Devonshire Way
Sunnyvale, CA 94087-3512

Subject: Action taken by the Planning Commission to deny the appeal of a
Miscellaneous Plan Permit

Mr. Bret Flesner:

On June 8th, 2009, the Planning Commission denied the request for an appeal of a Miscellaneous Plan Permit application for a 6'10" wood and concrete fence in the front yard for a site at 805 Devonshire Way. Per Sunnyvale Municipal Code Section 19.82.040 (2) (b), decisions of a Miscellaneous Plan Permit by the Planning Commission are final. The approval of the decision by the Director of Community Development was upheld by the Planning Commission and is subject to the following Conditions of Approval:

- A. Three options are available regarding the setback and height of the fence:
- 1) The fence shall be set back from the front property line so that it does not extend more than 2' beyond the face of the garage (approximately 19' setback required); and the fence shall not exceed 6' in height as measured from the grade (6'10" if measure from top of curb)
 - 2) The fence may remain in its current location, at a 6' setback from the front property line; and the fence shall not exceed 4'6" in height as measured from the top of the nearest adjacent public curb (approximately 3'10" above grade)
 - 3) The fence shall be setback 11' from the property line and not exceed 6'5" as measured from grade, as approved by staff for the nearby property at 814 Devonshire Way.

If built over 6 feet, a Building Permit is also required. If you have any questions, you may contact me at 408-730-7431 or rkuchenig@ci.sunnyvale.ca.us.